

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 4-8, 14-19, and 23-27 are pending in this application. By this amendment, Claims 4, 5, 14, and 19 have been amended. It is respectfully submitted that no new matter has been added.

In the outstanding Official Action, Claims 4-8, 14-19 and 23-27 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter; and Claims 4-8, 14-19 and 23-27 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 4-8, 14-19 and 23-27 were further indicated as being allowable over the prior art, pending resolution of the aforementioned objections and rejections under 35 U.S.C. §101.

Applicant hereby expresses appreciation for the granting of a personal interview on July 15, 2008. The arguments presented during the interview are consistent with the arguments presented below.

With respect to the rejection of Claims 4-8, 14-19 and 23-27 under 35 U.S.C. §112, second paragraph, as being indefinite, independent Claims 4, 5, 14 and 19 have been amended consistent with the recommendation made by the Examiner during the interview so that they now recite “an embedded code which ... is a concatenation of a plurality of component codes.” It is respectfully requested that the rejection under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

With regard to the rejection of Claims 4-8, 14-19 and 23-27 under 35 U.S.C. §101 as directed to non-statutory subject matter, the Office Action characterizes the application disclosure as “software-only.” The Office Action further states “[t]he claims lack any recitation that would explicitly limit the claimed “unit” to being a physical thing, nor does the specification provide any teaching that would suggest the claimed “unit” as being anything

other than a “series of bits.”” The Office Action further states that the claims “refer[s] exclusively to a software *per se* embodiment of the instant invention, as evidenced by the fact that the only definition of the term “unit” found in the specification refers to a series of bits (page 22), coupled with a lack of recitation for any actual hardware to implement the claimed limitations.” Applicant respectfully disagrees.

The Court of Appeals for the Federal Circuit has held in *AT&T Corp. v. Excel Communications Inc.*, 50 USPQ2d 1447, 1453 (Fed. Cir. 1999):

This understanding of transformation is consistent with our earlier decision in *Arrhythmia*, 958 F.2d 1053, 22 USPQ2d 1033 (Fed. Cir. 1992). *Arrhythmia*’s process claims included various mathematical formulae to analyze electrocardiograph signals to determine a specified heart activity. *See id.* at 1059, 22 USPQ2d at 1037-38. The *Arrhythmia* court reasoned that the method claims qualified as statutory subject matter by noting that the steps transformed physical, electrical signals from one form into another form -- a number representing a signal related to the patient’s heart activity, a non-abstract output. *See id.*, 22 USPQ2d at 1038. The finding that the claimed process “transformed” data from one “form” to another simply confirmed that *Arrhythmia*’s method claims satisfied Section 101 because the mathematical algorithm included within the process was applied to produce a number which had specified meaning -- a useful, concrete, tangible result -- not a mathematical abstraction. *See id.* at 1060, 22 USPQ2d at 1039.

The court went on to add, “[s]ince the claims at issue in this case are directed to a process in the first instance, a structural inquiry is unnecessary.” Accordingly, it is respectfully submitted that method Claim 4 need not recite structure. Accordingly, it is respectfully submitted that the statement in the Office Action that “[c]laim 4 is rejected as evidenced by claim 5” should be reconsidered and withdrawn.

It is respectfully submitted that the assertion in the Office Action that the specification does not provide any teaching that would suggest the claimed “unit” as being anything other than a “series of bits” and that the disclosure is “software-only” is a mischaracterization of the application disclosure. Rather, the specification makes clear that structure is disclosed.

On specification pages 32 through 36 and in the Detailed Description that follows, the specification expressly states that the portions of the disclosure in FIGs. 5-8, 10-12, 16-17, 20-21, 26-29, 33-34, 36-37 and 39-40 show structure. Each of these figures shows components, or units, that provide support for the claimed invention in a manner consistent with 37 C.F.R. §1.83(a) which states:

However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labelized rectangular box).

With regard to Claim 5, examples of some of the recited elements of the claim are listed as follows with respect to FIG. 10 which is described in the specification page 40, lines 10-11 as showing “the structure of the embedded-code detecting section”:

“A code divider” – code division section 41.

“A component code decoder” – component code detecting sections 42-1 through 42-k’.

“A colluder number calculator” – collusion discriminating sections 44-1 through 44-k’.

“A colluder number calculator” – colluder ID calculating section 46.

Numerous other examples of support for the structural elements recited in Claims 5-8, 14-19 and 23-25 are found throughout the specification description of the figures listed above.

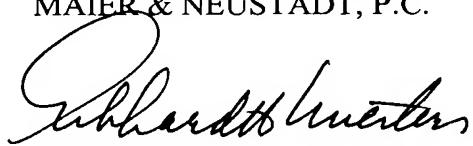
Accordingly, it is respectfully requested that the rejections of Claims 4-8, 14-19 and 23-27 be reconsidered and withdrawn, and that Claims 4-8, 14-19 and 23-27 be found allowable.

Consequently, for the reasons discussed in detail above no further issues are believed to be outstanding in the present application and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below-listed telephone number.

Respectfully submitted,

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